

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

STATE OF WASHINGTON,	)	No. 62114-9-I
	)	
Respondent,	)	
	)	
v.	)	
	)	
VENIAMIN PETROVICH PURIS,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: June 15, 2009
	)	

Ellington, J. — Veniamin Puris appeals his conviction on one count of possession of stolen property on grounds that the court improperly admitted evidence suggesting involvement in other criminal activity. We find no abuse of discretion, and affirm.

BACKGROUND

Christa Cook rented a storage unit at Safeguard Self Storage in Kent. Veniamin Puris accompanied Cook to the unit and had contact with the Safeguard manager Dawn Garratt on several occasions. Cook fell behind in rent payments in January 2008, and Garratt locked her out. Later that month, someone attempted to break into Cook's unit. When Garratt reported the incident to police, she was told to call back if Cook or anyone connected to the unit came to the facility.

A few days later, Puris came to the facility, paid the outstanding rent, and

asked for access to Cook's storage unit. Garratt refused because the unit was not in Puris's name. Garratt did not call the police at that time, but reported the contact when an officer made a follow-up phone call.

On January 27, Cook and Puris returned to the facility. Puris arrived on a motorcycle and Cook drove a car. When Cook went inside the office to request a new access code, Puris drove away in the car, leaving the motorcycle in a tow away zone. The assistant manager notified Garratt when Puris and Cook arrived, and Garratt called the police. The responding officer ran the motorcycle's license plates and discovered it had been reported stolen. The officer also observed the motorcycle's ignition had been "punched." The registered owner retrieved the motorcycle and confirmed he had given no one permission to drive it.

The State charged Puris with possession of a stolen vehicle. Over his objections, the agreed to allow limited testimony about the attempt to break into Cook's storage unit. A jury convicted Puris as charged.

### DISCUSSION

Puris contends the court should have excluded evidence of the attempted break-in because the evidence was irrelevant to the charges and caused unfair prejudice by suggesting that Puris was involved in uncharged criminal activity. We review the decision to admit the evidence for abuse of discretion, and find none.<sup>1</sup>

The only disputed issue in this case was Puris's identity as the person riding

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<sup>1</sup> State v. Atsbeha, 142 Wn.2d 904, 913–14, 16 P.3d 626 (2001). A court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. State v. Stenson, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997).

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the motorcycle. Evidence of the attempted break-in was relevant because it was in

response to the break-in that Garratt initially reported to police and was instructed to call back if Cook or her associates returned. When Puris tried to access the storage unit a few days later, Garret took note. She had him write his name down, and informed police of the contact. The break-in thus triggered the sequence of events that allowed Garratt to identify Puris as the person who possessed the stolen motorcycle.

Evidence of the attempted break-in was also properly admitted as *res gestae* to explain why Garrett called the police when Puris and Cook came to the storage facility.<sup>2</sup> As the trial court observed, excluding this evidence would make Garratt's decision to call the police less plausible, and her testimony less credible.<sup>3</sup>

Relevant evidence may nonetheless be excluded if its potential for unfair prejudice outweighs its probative value.<sup>4</sup> Puris contends that is so here, but we disagree. Since the ability of Safeguard employees to recognize Puris was the only evidence on the issue of identity, the circumstances surrounding their contacts with him was certainly probative. As earlier noted, there was no evidence linking Puris to the attempted break-in. The testimony about the break-in was limited to a single question and brief response.<sup>5</sup> And neither party mentioned the incident during closing

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<sup>2</sup> See State v. Acosta, 123 Wn. App. 424, 442, 98 P.3d 503 (2004) (*res gestae* evidence is admissible where it is part of a sequence of events surrounding the charged offense in order to provide the jury a complete picture).

<sup>3</sup> The court ruled that excluding the evidence would make Garratt's "story . . . totally implausible when we knew the truth to be otherwise. She had a reason for calling the police that day, and it will, it would seem very strange and it would stretch credulity if there were no reason why she called the police." Report of Proceedings (June 9, 2008) at 17.

<sup>4</sup> ER 403.

argument. We see little potential for unfair prejudice.

Similarly, there is little chance the outcome of the trial would have been different had the evidence been excluded. Identity was the only disputed issue in the case. Both Garratt and another Safeguard employee unequivocally identified Puris as the person they saw driving the stolen motorcycle. Any error was therefore harmless.<sup>6</sup>

Affirmed.

Edington, J

WE CONCUR:

Dwyer, A.C.J.

Grosse, J

<sup>5</sup> Indeed, the officer who responded to the call about the attempted break-in testified without ever mentioning the reason for the call.

<sup>6</sup> State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997) (evidentiary errors are harmless “unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred”).